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8
9 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
EQUAL EMPLOYMENT) CIVIL ACTION NO. CV-11-3045-
10 OPPORTUNITY COMMISSION,) RMP
)
11 Plaintiff,) **EEOC’S MEM. OF POINTS &**
) **AUTH. IN SUPPORT OF ITS**
12 v.) **MOT. FOR SUMM. J. THAT**
) **GREEN ACRE FARMS, INC.**
13 GLOBAL HORIZONS, INC. D/B/A) **IS LIABLE AS A JOINT**
GLOBAL HORIZONS MANPOWER,) **EMPLOYER WHO KNEW OR**
14 INC.; GREEN ACRE FARMS, INC.;) **SHOULD HAVE KNOWN BUT**
VALLEY FRUIT ORCHARDS, LLC;) **FAILED TO CORRECT: (1)**
15 AND DOES 1-10, INCLUSIVE;) **DISCRIMINATORY**
) **TREATMENT BASED ON**
16 Defendants.) **NATIONAL ORIGIN AND**
) **RACE AND RELATED**
17) **PATTERN OR PRACTICE**
) **CLAIM; AND (2) HOSTILE**
18) **WORK ENVIRONMENT AND**
) **RELATED PATTERN OR**
19) **PRACTICE CLAIM**
)
20) Hearing: September 20, 2019 at
) 6:30 p.m. without oral argument
21)

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STATUTES

Fed.R.Civ.P. 56(c)13

I. INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) moves for summary judgment against Green Acre Farms, Inc. (“Green Acre”). Pursuant to Fed. R. Civ. P. 56(c) and Local Rule 56.1, summary judgment is warranted since there is no dispute as to any material fact that Green Acre is liable as a joint employer of Global Horizons, Inc. (“Global”) because it (1) knew or should have known that Global subjected the Claimants to a pattern or practice of disparate treatment and a hostile work environment based on their national origin and race (Thai) in violation of Title VII of the Civil Rights Act, *as amended*. 42 U.S.C. §2000e-5, *et seq.* and (2) failed to take corrective measures within its control. *EEOC v. Global Horizons, Inc. et al.*, 915 F.3d 631, 641 (9th Cir. 2019).

“All parties agree that the Growers [i.e., Green Acre and Defendant Valley Fruit Orchards] and Global were joint employers of the Thai workers with respect to orchard-related matters.” *Id.* at 634. As the Ninth Circuit held, Growers were responsible for inadequacies in non-orchard related matters (housing, meals, transportation and wages) which affected the Claimants. *Id.* at 640-41. Because they could not delegate this obligation, Growers had a duty to investigate whether Global provided proper housing, food, transportation, and pay. Yet, Green Acre did not investigate and ignored various warning signs including ongoing state investigations, Green Acre personnel visiting the housing, and Thai worker complaints. Thus, Green Acre knew or should have known of the disparate

1 treatment and hostile work environment because the Claimants complained directly
 2 to Green Acre, including its owner, about the abysmal living conditions, unsafe
 3 transportation, and missing or late wages. Instead, Green Acre admits it chose to
 4 do nothing, even when it learned of the state and federal investigations related to
 5 these complaints in 2004 and 2005. Thus, warranting summary judgment.

6 **II. STATEMENT OF FACTS**

7 **A. Green Acre Did Not Investigate Whether Claimants Received Adequate Housing, Meals, Transportation, and Wages.**

8 Green Acre admitted that during the time Global's employees were assigned
 9 to Green Acre's orchards in 2004 and 2005, Green Acre did not conduct audits or
 10 otherwise have a policy, practice or procedure for the purpose of overseeing or
 11 reviewing Global's "H-2A visa compliance." (PSMF #1).¹ Green Acre also
 12 admitted it did not conduct an independent investigation after knowing about the
 13 investigations by L&I and the U.S. Department of Labor. (PSMF #2).

14 **1. Green Acre Knew or Should Have Known Global Recruited Thai Workers based on Discriminatory Stereotypes.**

15 Global's Chief Executive Officer ("CEO") Mordechai Orian ("Orian")

16
 17 ¹ "PSMF" refers to the facts and citations to the records stated in Plaintiff
 18 EEOC's Statement of Material Facts Supporting its Motion for Summary
 19 Judgment Against Green Acre Farms, Inc., which references the exhibits attached
 20 to the Declaration of EEOC Trial Attorney Lorena Garcia-Bautista, both filed
 21 concurrently with this motion.

1 informed the Growers in 2004 and 2005 that he would be bringing foreign H-2A
2 workers from Thailand. (PSMF #3). Green Acre's owner Jim Morford, along with
3 Jose Cuevas, a Global supervisor, and Global's manager Bruce Schwartz
4 ("Schwartz"), were present when Orian said the Thai workers, "worked with hoes
5 between rocks and were not afraid of the heat and that the Thai workers are needed
6 in Washington because the [Hispanic] workers don't work like that." (PSMF #4).
7 Morford also clearly stated a preference for Thai workers by stating that Hispanic
8 workers came up with excuses and questioned things too much, and that they did
9 not want to follow the rules and they just wanted to sue for no reason. (PSMF #5).
10 Orian also told Morford and Cuevas that he planned to buy land far away from the
11 city so that the Thai workers would be isolated and would not be able to speak to
12 anyone. (PSMF #6). Morford and Orian nodded their heads in agreement when
13 Schwartz said several times that Thai workers were less likely to be informed
14 about their legal rights and they would just want to work. (PSMF #7). Green
15 Acre's Controller Kevin Boyle stated in an email dated March 24, 2004, to Global:
16 "I understand that the gentlemen from Thailand will be showing up today. Jim
17 [Morford]'s plan is to work them 7 days a week for a while in the near future.
18 Since this is an agricultural business in Washington, we do not pay overtime....
19 Are we paying any overtime rates to you for ANY amount of hours?" (PSMF #8).
20 Further, Green Acre deliberately discouraged local workers from working at Green
21 Acre since Morford banned certain local workers from Green Acre. (PSMF #9).

1 Morford and Orian often discussed removing and replacing Hispanic workers with
2 Thai workers. (PSMF #10).

3 **2. Green Acre Knew Global Was An Unlicensed Farm Labor**
4 **Contractor Investigated For Numerous Violations in 2004**
5 **and 2005.**

6 From January 2004 to October 7, 2004, Global operated as an unlicensed
7 Washington Farm Labor Contractor at Green Acre. (PSMF #11). Green Acre
8 knew in the Summer of 2004 that Global did not have a Washington farm labor
9 contractor license. (PSMF #12). In fact, Global did not obtain a Washington farm
10 labor contractor license until on or about October 2004. (PSMF #13). Green
11 Acre's owner Morford admitted Nemencio "Nick" Hernandez ("Hernandez") and
12 Claudia Sealock from the Wage and Hour Division of the Washington Department
13 of Labor and Industries ("L&I") came to Green Acre's orchard around July 2004
14 asking about Global's payroll records and asked to see Global's license. (PSMF
15 #14). Morford provided a license, but it was not the required Washington State
16 license. Hernandez also confirmed that he told Morford between June and October
17 2004, that Global was not registered as a farm labor contractor in Washington.
18 (PSMF #15). Such knowledge should have prompted Green Acre to investigate
19 Global. But, Green Acre continued to use Global's services until the first contract
20 expired in November 2004 and rushed to enter into a second contract in January
21 2005. (PSMF #16).

Moreover, despite Global having the provisional Washington Farm Labor

1 Contractor license in 2005, the U.S. Department of Labor revoked its federal farm
2 labor contractor certificate in October 2005. (PSMF #17).

3 In or about December 2004, Global was assessed penalties and citations by
4 L&I for its inadequate, overcrowded, unsanitary housing, lack of first-aid training
5 and certification, lack of hand washing facilities, inadequate septic system, lack of
6 electrical faceplates and other electrical hazards, lack of hot and cold running
7 water, lack of safe food storage space, and lack of proper beds for the Thai
8 workers. Growers had the opportunity to see these violations posted because they
9 had to be posted at the following eight (8) worksites and/or housing locations:

10 (1) 20 Bailey Rd., Block 2, Zillah, WA 98953 (Inspection
No. 308074277);

11 (2) 381 Buena Loop, Zillah, WA 98953 (Inspection No.
308079557);

12 (3) 1671 Houghton Zillah, WA 98953 (Inspection No.
308079664);

13 (4) 1700 N. 1st St., Yakima, WA 98901 (Inspection No.
308130541);

14 (5) 1490 Pumphouse Road, Block 32, White Swan, WA
98954 (Inspection No. 308070804);

15 (6) 14390 Pumphouse Rd., Block 2, White Swan, WA
98954 (Inspection No. 308186600);

16 (7) 1705 Gordon Rd., Yakima, WA 98901 (Inspection
No. 308080290); and

17 (8) 451 Island Road, White Swan, WA 98954 (Inspection
No. 308186626).

18 (PSMF #18).

19 The State of Washington also issued notices to Global detailing the violation
20 and assessing penalties in or about May and June 2005. Green Acre admitted that
21

1 it learned through an investigation by L&I that Global deducted state income tax
2 from the Thai workers' pay, despite Washington not having a state income tax
3 (PSMF #19). Moreover, Orian testified that upon receiving a notice of
4 discontinuation of employment services from the State Employment Security
5 Department in May 2005, he shared that information with Growers. (PSMF #20).
6 On or about June 3, 2005, Green Acre also learned that Global had been alleged by
7 the State of Washington to have violated numerous substantive provisions of the
8 Farm Labor Contractor Act ("FLCA"), RCW 19.30 *et seq.* (PSMF #21).
9 According to its Answer, at some point in 2005, Green Acre became aware of
10 public allegations that Global violated the FLCA. (PSMF #22).

11 No later than July 13, 2005, Green Acre, along with Global and Valley Fruit,
12 were sued by Hispanic farm workers in *Perez-Farias v. Global Horizons, Inc., et*
13 *al.*, Case No. 2:05-cv-03061-RHW, in the Eastern District of Washington. The
14 Perez-Farias plaintiffs alleged that Global, Green Acre, and Valley Fruit violated
15 state and federal laws by illegally and intentionally displacing them in 2004 with
16 workers from Thailand. (PSMF #23). At this time, attorney Ryan Edgley
17 represented all three defendants. (*Perez-Farias et. al. v. Global Horizons, Inc., et.*
18 *al.* ECF Docket #s 2 and 65). Although Green Acre's owner Morford
19 acknowledged that the lawsuit "would have threw (sic) up a red flag to me;" he
20 continued to do business with Global in 2005. (PSMF #24). In fact, in an e-mail
21 dated September 22, 2005, Green Acre's Controller Kevin Boyle wrote, "[e]ven

1 with the law suit pending, we have confidence in a long term relationship that will
 2 benefit us all.” (PSMF #25). In *Perez-Farias*, the jury and the Court found that
 3 Global deliberately took steps to discourage local workers from obtaining work
 4 with Growers and in doing so, it violated various provisions of the FLCA and that
 5 Growers were jointly and severally liable for damages for Global’s misconduct.
 6 (PSMF #26). Eliminating the Hispanic workers enabled Growers to take
 7 advantage of the Thai workers kept captive in the custody of Global. *Perez-*
 8 *Farias*, 2008 WL 833055 at *6 (E.D. Washington 2008).

9 Green Acre admitted that it knew that about the settlement between Global
 10 and the Washington Department of Labor which included admissions of various
 11 improper withholdings of taxes (i.e. Global withheld federal and state income taxes
 12 from the Claimants), violations of other terms and conditions of employment, and
 13 misrepresentations of to DOL in Global’s applications for labor certifications in
 14 2005. (PSMF #27). Attorney Ryan Edgley signed the settlement as counsel for
 15 Global and had represented Green Acre when the *Perez-Farias* plaintiffs filed suit
 16 in July 2005. (PSMF#49). Global stipulated to the following facts as part of the
 17 Settlement Agreement:

18 (1) Global operated as an unlicensed Washington State
 19 farm labor contractor (FLC) while providing agricultural
 20 labor services to Green Acre Farms from January 28, 2004
 until October 7, 2004, and to Valley Fruit Orchards from
 21 January 27, 2004 until October 7, 2004...

(2) Global did not provide a worker agreement in Thai to
 its Thai workers at Green Acre Farms at 1490 Pump House

1 Rd., White Swan WA 98952.

2 (3) [Although Global provided the ETA 790 Clearance
3 Orders to its Thai workers], the Clearance Orders lack
4 information required by RCW 19.30.110(7) for worker
5 agreements.

6 (4) Global violated WAC296-131-015 by failing to
7 include its telephone number, address, and beginning date
8 of the pay period on its employee pay statements during
9 2004-2005...

....

6 (6) In 2004, Global withheld \$3,166.02 in wages from its
7 H-2A foreign employees ... [although] Washington State
8 does not have a state income tax...

9 (7) In 2004, Global withheld \$93,864.32 in wages from its
10 H-2A employees for federal taxes... [although] Global
11 was exempt from all federal tax withholding requirements
12 for its H-2A workers...

13 (8) Global paid the withheld federal income taxes to the
14 IRS. However, Global has not yet reimbursed any of its
15 H-2A employees for the \$93,864.32 in wages withheld for
16 federal income taxes.

17 (9) Global housed its employees at three locations not
18 listed in its H-2A applications without prior approval of
19 the United State Department of Labor and did not submit
20 the required Washington State license application and fee
21 to operate temporary worker housing at ...[the following
locations:] (a) Docket No. 05-03-C-2002TH: Mabton
Apartments, Mabton, WA; (b) Docket No. 05-03-C-
2003TH: Buena Mobile Home, Buena, WA; (c) Docket
No. 05-03-C-2004TH: El Corral Motel, Toppenish, WA.
The Washington Department of Health notified Global of
these violations and assessed civil fines for each location
in three separate letters all dated March 3, 2005...;

....

18 (12) Global reported a total of 82,897 hours for the first,
19 second, and third quarters in 2004...[, and] reported all of
20 the reported employee work hours for this time period in
21 the wrong risk class...

(13) On December 30, 2004, Global was issued four
separate "serious" WISHA safety citations for violations
at unlicensed farm worker housing sites where Global

1 housed workers in 2004. Two \$400 assessments were
2 issued for the inspection site located at 1700 North 1st
3 Street, Yakima, WA 98901, for (1) insufficient cooking
4 facilities (WAC 296-307-16165) resulting in workers
5 cooking on carpeted and bathroom floors, and for (2) an
6 overloaded wall electrical receptacle (WAC 296-307-
7 16140(2)) where three appliances were plugged into an
8 outlet designed for two appliances. A \$400 assessment
9 was issued for the inspection site located at 1705 Gordon
10 Rd., Yakima, WA 89801 for insufficient cooking facilities
11 (WAC 296-307-16165) resulting in an employee cooking
12 on a carpeted floor. All three of these assessments were
13 affirmed by Chuck Durham, Hearing Officer for the
14 WISHA Services Division in Corrective Notices of
15 Redetermination dated March 29, 2005...

(14) Global misrepresented to the Department the number
of workers its was employing in Washington State during
2004. Global's original July 30, 2004 FLC new license
application stated that it intended to employ 30 workers
during 2004. Global's October 5, 2004 response to the
Department's September 29, 2004 request for a new FLC
license application increased its intended employment
number to 180.

(15) Global misrepresented and underreported to the
Washington State Department of Labor and Industries the
number of H-2A worker to work in Washington in 2005
by 250 workers in its FLC renewal application for the year
2005.

(16) Global intended to bring at least 500 H-2A workers
in to work in Washington State during 2005, if authorized
by DOL. In its December 13, 2004 letter to DOL, Global
requested certification to bring in 250 H-2A workers for
its Zirkle Fruit contract. In its letter and Clearance Order
regarding Zirkle Fruit request, Global stated that all 300
H-2A workers brought in to work at Zirkle Fruit would be
housed at the Tourist Motel Inn, located at 1223 North 1st
Street, Yakima, WA (Occupancy: 300). In its letter
regarding the Green Acre request, Global stated that the
250 workers requested for the Green Acre contract would
be at 3 employer-provided housing sites: 1671 Houghton
Road, Zillah, WA (Occupancy: 23), 1881 Houghton Road,

1 Zillah, WA (Occupancy: 23), 381 Buena Loop Road,
 2 Yakima, WA (Occupancy: 17), and one public
 accommodation site, the Red Carpet Motor Inn located at
 1608 Fruitvale Blvd., Yakima, WA (Occupancy: 200)....

3
 4 (19) In its April 12, 2005 application to [DOL] requesting
 H-2A certification for 250 workers, Global listed job
 5 duties (i.e. frost set up and pruning) that are not consistent
 with activities that occur in May and June.

6 (PSMF #28). Items 2-13 reflect Global's failure to provide promised terms and
 7 conditions of employment that Green Acres had a non-delegable duty to provide
 8 and items 1, 14-19 confirm that Global's ongoing misrepresentations to DOL in
 9 applications for labor certification filed to supply workers to Growers in 2005.

10 **3. Green Acre Knew or Should Have Known about the**
Substandard Housing, Transportation, and Shorted Wages.

11 Global informed Green Acre where it housed the Thai workers and Green
 12 Acre's personnel visited their housing. (PSMF #29). Green Acre's Owner Morford
 13 and Managers Arnold Anaya, admitted that they saw the Thai workers arrive to the
 14 ranch in the overcrowded, unsafe vehicles. (PSMF #30).

15 Green Acre directly interfered with the Thai workers' pay since e-mails
 16 between Green Acre and Global confirmed that Green Acre was not paying
 17 Global's invoices on time for work performed by the Thai workers in 2005.
 18 (PSMF #31). Moreover, Green Acre's Controller Kevin Boyle confirmed in
 19 March 2004 that Morford's plan was to work the Thai workers seven days per
 20 week and not pay them overtime. (PSMF #32). In addition, Morford fired a group
 21 of Thai workers and/or Green Acre suspended a group of Thai workers for a week

1 without pay for not meeting arbitrary quotas not included in the Clearance Orders
2 that defined the terms of their work and/or for not picking apples properly. (PSMF
3 #33). Further, as early as September or October 2004, the Thai workers
4 complained about their wages, but Green Acre did not follow up to make sure they
5 were getting paid in 2005. (PSMF #34).

6 L&I investigator Hernandez told Morford that L&I was investigating
7 complaints from the Thai workers about wages and breaks. *Id.* Green Acre
8 admitted it was generally aware L&I's investigation. (PSMF #35). In 2004, when
9 Hernandez received Global's invoices from Green Acre for February to August
10 2004, he warned Morford that Green Acre could be liable if Global did not abide
11 by the state employment standards. (PSMF #36). Schwartz also explained the
12 wage and hour guidelines to a Green Acre foreman and that Global was
13 undergoing a state inspection. (PSMF #37).

14 Green Acre admits it later became generally aware about issue with workers'
15 wages, which were resolved in the September 2005 settlement between Global and
16 the State of Washington. (PSMF #38). Green Acre ignored the chance to take
17 corrective action in or about October 2005 when L&I's Hernandez conducted a
18 follow-up investigation to interview the Thai workers to see if they had gotten
19 paid. In 2005, Global supervisor Pranee Tubchumpol ("Tubchumpol") told
20 Hernandez that there was no money in the bank because the money was with her in
21 a bag. (PSMF #39). Tubchumpol then opened a bag for Hernandez to see what

1 she described as \$40,000 in the bag. *Id.* When Hernandez followed up the next
 2 day to see if the Thai workers got paid, Tubchumpol and the Thai workers were
 3 gone. *Id.* Morford never contacted Hernandez to inquire about the results of
 4 L&I's investigations of Global. (PSMF #40).

5 **4. Green Acre Knew or Should Have Known the Thai**
 6 **Workers Were Being Treated Less Favorably than the**
 7 **Hispanic Workers.**

8 The Thai workers were being treated less favorably than the Hispanic
 9 workers since the Hispanic workers were paid more money for less work because
 10 they were paid based on the amount of fruit they picked, while Thai workers were
 11 paid by the hour and forced to work faster to meet quotas set by Green Acre.
 12 (PSMF #41). Global's supervisors confirmed that they received instructions from
 13 Green Acre regarding the quotas imposed on the Thai workers. (PSMF #42).

14 **5. The Thai Workers were Routinely Threatened.**

15 Green Acre routinely subjected the Thai workers to threats and Morford
 16 personally reprimanded the Thai workers. (PSMF #43). In fact, during the
 17 multiple meetings with Morford in 2005, the Thai workers were told they had to
 18 meet production quotas and if they failed, they would be deported back to
 19 Thailand. (PSMF #44). Morford gave Global a form illustrating his detailed
 20 expectation for the Thai workers. (PSMF #45). Only the Claimants were subjected
 21 to the yelling and threats of deportation. (PSMF #46). Morford was also present at

1 the orchard to witness a group of Thai workers get in a school bus driving through
 2 the orchards at Green Acre at 30 mile per hour trying to run away. (PSMF #47).

3 **III. SUMMARY JUDGMENT STANDARD**

4 Summary judgment should be granted if there is no genuine issue of material
 5 fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P.
 6 56(c) “When the moving party has carried its burden under Rule 56(c), its
 7 opponent must do more than simply show that there is some metaphysical doubt as
 8 to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
 9 574, 586 (1986). The non-moving party must “set forth specific facts showing that
 10 there is a genuine issue for trial.” *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 891
 11 (9th Cir.2005). “A scintilla of evidence or evidence that is merely colorable or not
 12 significantly probative [does not] present a genuine issue of material fact.” *Addisu*
 13 *v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (2000).

14 **IV. LEGAL ARGUMENT**

15 “Liability may be imposed for co-employer’s discriminatory conduct only if
 16 defendant employer knew or should have known about other employer’s conduct
 17 and failed to undertake prompt corrective measures within its control.” *EEOC v.*
 18 *Global Horizons, Inc. et al.*, 915 F.3d at 641. Here, there are no genuine disputes
 19 of material fact that Green Acre knew or should have known of Global’s
 20 discriminatory treatment of the Thai workers but chose to do nothing.

1 Judge Shea has held that Global subjected the Claimants to a hostile work
 2 environment based on inadequate housing, food, wages, and transportation.² (ECF
 3 No. 679 at *7.) Green Acre retained a non-delegable duty to provide wages,
 4 housing, transportation, and access to low-priced meals or access to cooking
 5 facilities to the Claimants. *EEOC v. Global Horizons, Inc.*, 915 F.3d at 639-41.

6 Despite their non-delegable duty, Green Acre ignored all warning signs of
 7 Global's discriminatory conduct and chose to take no corrective actions. In fact,

8
 9
 10 _____
 11 ² The Growers responded to the EEOC's motion for default against Global by
 12 stating that they "do not take a position regarding" "the substantive issues" or the
 13 "EEOC's request for \$19,500,000 in damages against Global." (ECF No. 651 at
 14 3:11-12 and 4:21-22.) Growers further stated they were not liable for any portion
 15 of any judgment against Global because, they were "absolved" of liability on "*all*
 16 of the EEOC's Title VII claims." ECF No. 651 at 4:13-17 citing ECF No. 582 and
 17 614.) But, the orders granting Growers' motion for summary judgment (ECF No.
 18 582) and for fees (ECF No. 614) was reversed. *EEOC v. Global*, 915 F.3d at 642-
 19 643. Growers have no grounds to challenge Judge Shea's default judgment against
 20 Global on other grounds since they took the opportunity to oppose the EEOC's
 21 default motion prior to the appeal.

1 Green Acre did not conduct audits, investigate or otherwise implement a policy,
2 practice or procedure to ensure Global's H2-A compliance. (PSMF #s 1-2).

3 There is no genuine issue of material fact that Global and Green Acre
4 recruited Thai workers based on discriminatory stereotypes they sought to
5 manipulate because Orian and Morford discussed their stereotypes about the Thai
6 workers with other supervisors from both companies. Morford stated that Hispanic
7 workers came up with excuses, questioned things too much, did not want to follow
8 the rules, and they just wanted to sue for no reason. (PSMF #5). Orian also told
9 Morford he planned to buy land far away from the city so the Thai workers would
10 be isolated from anyone who could inform them of their legal rights. (PSMF #6).

11 With regard to wages, there is no genuine issue of material fact that Green
12 Acre directly interfered with the Thai workers' pay. Controller Boyle's email
13 dated March 24, 2004 to Global, confirmed Green Acre's effort to short the Thai
14 workers' pay: "I understand that the gentlemen from Thailand will be showing up
15 today. Jim [Morford]'s plan is to work them 7 days a week for a while in the near
16 future. Since this is an agricultural business in Washington, we do not pay
17 overtime.... Are we paying any overtime rates to you for ANY amount of hours?"
18 (PSMF #8). This establishes that Green Acre intended to violate the H2-A
19 regulations that established the Claimants' terms and conditions of employment,
20 keeping them isolated and unaware of their rights, so that they could take
21 advantage of them with a discriminatory purpose. Judge Shea has held:

1 “Frequently Global delayed payment of earned wages to the claimants causing
2 financial hardship to them and their families” (ECF No. 679 at *7). E-mails
3 between Green Acre and Global confirmed that Green Acre was not paying Global
4 on time for work performed by the Thai workers in 2005. (PSMF #31). Despite
5 knowing in September or October 2004, that the Thai workers were complaining
6 about their wages, Green Acre did not follow up to make sure they were getting
7 paid in 2005. Hernandez of L&I told Morford that the department had received
8 complaints from the Thai workers about wages and that Green Acre could be
9 liable. (PSMF #36). Green Acre specifically admitted that it learned through L&I’s
10 investigation that Global improperly deducted state income tax from the Thai
11 workers’ pay. (PSMF #19). But, Morford never contacted Hernandez about L&I’s
12 investigations of Global. (PSMF #40). Instead, Green Acre finished out the first
13 contract with Global in November 2004, then without hesitation signed a second
14 contract in January. (PSMF #16). Orian testified that he told Growers upon
15 receiving a notice of discontinuation of employment services from ESD in May
16 2005. (PSMF #20). Morford himself ignored warning signs he saw: he and
17 Schwartz were present at the orchard when a group of Thai workers started driving
18 through the orchards at Green Acre at 30 mile per hour trying to run away. (PSMF
19 #47).

20 With regard to housing, Judge Shea already found that “Global rented living
21 facilities away from the orchards. These facilities were substandard because they

1 were too small for the number of claimants assigned to them resulting in
2 overcrowding; these living quarters lacked adequate bathrooms and cooking
3 appliances, were unsanitary, and were bug infested, making them virtually
4 uninhabitable.” (ECF No. 679 at *7). Green Acre knew or should have known
5 Global subjected Claimants to uninhabitable housing in violation of various laws
6 because Green Acre’s personnel visited their housing and both Orian and Schwartz
7 testified Green Acre was told where the Thai workers were housed. (PSMF #29).
8 Given their ultimate responsibility for housing, this required Green Acre to
9 investigate the housing, but Green Acre chose to investigate nothing.

10 Green Acre also knew or should have known Global was under state and
11 federal investigations and was assessed penalties for violating state and federal
12 laws with respect to the Claimants’ housing in 2004 because these violations had to
13 be posted at the site of each violation. (PSMF #18). The postings at their worksites
14 should have prompted Green Acre to investigate Global but Green Acre did not
15 investigate.

16 With regard to transportation, Judge Shea previously held that, “The
17 claimants were subjected to unsafe and overcrowded transportation when it was
18 made available. Frequently, they were denied transportation to stores to buy food
19 and to health care facilities for medical attention to injuries and illnesses.” (ECF
20 No. 679 at *7). Green Acre knew or should have known the Thai workers were
21 transported unsafely because Morford and Anaya testified that they saw the Thai

1 workers arrive to the ranch in a dangerously overcrowded bus. (PSMF #30).

2 With regard to working conditions, Judge Shea ruled that, “The Thai
3 workers were given more difficult work and paid less than [Hispanic] workers at
4 the same work locations.” (ECF No. 679 at *7). Green Acre knew Thai workers
5 were being treated less favorably than the Hispanic workers since the Hispanic
6 workers were paid a piece rate, while Thai workers were paid by the hour and
7 forced to work faster to meet quotas set by Green Acre. (PSMF #41).

8 Green Acre knew or should have known that the Thai workers were subject
9 to harassing threats at the orchards since Morford personally reprimanded the Thai
10 workers including threats of deportation. (PSMF #43).

11 While Morford acknowledged that the 2005 *Perez-Farias* lawsuit “would
12 have threw (sic) up a red flag to me;” he continued to do business with Global in
13 2005. (PSMF #24). Green Acre admits that it became aware that Global had
14 entered a settlement with the State of Washington in September 2005 containing
15 various admissions on violating the law. (PSMF #27). But Controller Boyle’s
16 reaction on September 22, 2005, was, “[e]ven with the law suit pending, we have
17 confidence in a long term relationship that will benefit us all.” (PSMF #25).

18 The Settlement Agreement was signed on Global’s behalf by attorney Ryan
19 Edgley who also represented Growers in July 2005 when the *Perez-Farias* suit was
20 filed. (PSMF# 49). The Settlement Agreement shows Global admitting to
21 misrepresentations about the number of Thai workers needed Washington because

1 Global's purpose was to help Green Acre replace the Hispanic workers with Thai
2 workers held captive in unauthorized, isolated locations who could not readily
3 complain about the denial of adequate pay, transportation, and housing.

4 **V. CONCLUSION**

5 For the foregoing reasons, Green Acre is liable as a joint employer because
6 it knew or should have known that Global subjected the Claimants to a pattern or
7 practice of disparate treatment and a hostile work environment based on their
8 national origin and race and Green Acre failed to take prompt corrective measures
9 within its control.

10 Dated: July 31, 2019

Respectfully Submitted,

11 U.S. EQUAL EMPLOYMENT
12 OPPORTUNITY COMMISSION

13 /s/ Lorena Garcia-Bautista

14 **LORENA GARCIA-BAUTISTA**
15 Attorney for Plaintiff EEOC
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Certificate of Service via Electronic Filing System

I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission. My business address is Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012.

On the date that this declaration was executed, as shown below, I served the foregoing document **EEOC'S MEM. OF POINTS & AUTH. IN SUPPORT OF ITS MOT. FOR SUMM. J. THAT GREEN ACRE FARMS, INC. IS LIABLE AS A JOINT EMPLOYER WHO KNEW OR SHOULD HAVE KNOWN BUT FAILED TO CORRECT: (1) DISCRIMINATORY TREATMENT BASED ON NATIONAL ORIGIN AND RACE AND RELATED PATTERN OR PRACTICE CLAIM; AND (2) HOSTILE WORK ENVIRONMENT AND RELATED PATTERN OR PRACTICE CLAIM** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Brendan Victor Monahan, bvm@stokeslaw.com
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 31, 2019, at Los Angeles, California.

/s/ Lorena Garcia-Bautista

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